

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



Eighteenth meeting of the Conference of the Parties
Colombo (Sri Lanka), 23 May – 3 June 2019

Interpretation and implementation matters

General compliance and enforcement

DOMESTIC MARKETS FOR FREQUENTLY ILLEGALLY TRADED SPECIMENS

1. This document has been submitted by the Standing Committee.*

Background

2. At its 17th meeting (CoP17, Johannesburg, 2016), the Conference of the Parties adopted Decisions 17.87 and 17.88 as follows:

Decision 17.87 directed to the Secretariat

The Secretariat, subject to external funding and in consultation with relevant Parties, is requested to:

- a) *contract independent consultant(s) to undertake a study of the domestic controls in consumer markets for specimens of CITES-listed species for which international trade is predominantly illegal; and*
- b) *report the findings and recommendations of this study to the 70th meeting of the Standing Committee.*

Decision 17.88 directed to the Standing Committee

At its 70th meeting, the Standing Committee is requested to review the findings and recommendations of the Secretariat's report in Decision 17.87 and make recommendations for consideration at the 18th meeting of the Conference of the Parties, including appropriate revisions to existing resolutions, to strengthen domestic controls addressing illegal trade in specimens of CITES-listed species for which international trade is predominantly illegal.

3. The Decisions had been proposed by the United States of America (USA) as part of a broader set of actions to combat wildlife trafficking (see document [CoP17 Doc. 27](#)). This document also included several proposals related to elephant ivory, including proposals related to the closure of domestic markets for commercial trade in raw and worked ivory.

Implementation of Decision 17.87

4. Given the limited funding and time available, the Secretariat decided to undertake the study in two phases. In the first phase, the Secretariat asked the consultants to focus on domestic trade controls in consumer markets for elephant ivory. Domestic ivory trade had been discussed in detail at CoP17, and new provisions

* *The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat (or the United Nations Environment Programme) concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.*

had been adopted in Resolution Conf. 10.10 (Rev. CoP17) on *Trade in elephant specimens*. These new provisions in paragraph 3 recommend *inter alia* “that all Parties and non-Parties in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency.” Information is readily available concerning the regulation of the domestic trade in ivory, and provided a useful opportunity to test the approach and methodology, developed by the consultants. For these reasons, it seemed appropriate to study the regulation of domestic trade in elephant ivory in a first phase.

5. In a second phase, the study should focus on the domestic controls in consumer markets for specimens of other CITES-listed species for which international trade is predominantly illegal. The consultants were requested to propose a methodology for the selection of the relevant species and concerned consumer markets and to suggest a scope of the second phase of the study. The main findings of the first phase of the study, as well as the scoping of the second phase, were made available in information document [SC70 Inf. 18](#).
6. The study was made possible thanks to funding made available by the United States of America and to the – partly – *pro bono* work of the consultants (Environmental Law Institute) and their partners, as well as to the collaboration of Parties included in the study (see below). The Secretariat expressed its gratitude to the donor and to the consultants and Parties involved in this study. The main findings and recommendations of the first phase of the study, as well as the proposed scope of the second phase of the study are included in the following.

Main findings of the study related to controls of domestic ivory trade

7. The first phase of the study focuses on nine markets that were selected using information available to the Secretariat, *inter alia* in the Report on the Elephant Trade Information System (ETIS) [see document [CoP17 Doc. 57.6 \(Rev. 1\)](#)]. The nine markets selected for the study were China, including Hong Kong SAR, the European Union (EU) (and its Member States), Japan, Lao People’s Democratic Republic (PDR), Malaysia, Philippines, Thailand, USA and Viet Nam. The profiles of each of these markets prepared by the consultants were made available in information document [SC70 Inf. 19](#).

Bans of domestic ivory trade

8. All jurisdictions studied have imposed some sort of restriction on the domestic sale of ivory. China (and Hong Kong SAR), the EU, Malaysia, the Philippines, Viet Nam and the United States have generally banned the domestic trade in elephant ivory, with some exemptions to the general ban. The exemptions typically concern pre-Convention ivory (antiquities), trade and possession of ivory for scientific purposes, or items containing small amounts of ivory. In some jurisdictions, exemptions from the bans on sales and trade apply only to worked ivory products and explicitly exclude raw elephant ivory, including whole tusks, from the exemption (i.e. in the EU).
9. Lao PDR and Thailand have banned trade in ivory sourced from non-native elephants and from wild Asian elephants, but allow trade in ivory from domesticated Asian elephant populations.
10. Instead of a ban with exemptions, Japan has adopted a positive list of ivory specimens that may be sold legally on the domestic market:
 - whole tusks, cut pieces, and ivory products that pre-existed in Japan before the CITES trade ban (1980 for Asian elephants, and 1990 for African elephants);
 - whole tusks, cut pieces, and ivory products which were imported to Japan with pre-convention certificates; and
 - whole tusks imported to Japan in 1999 and 2009, as exceptions approved under CITES.

Possession of elephant ivory

11. The study differentiated among two types of possession: commercial and personal possession. While commercial possession was not defined by the study, it is understood to be ivory possessed by commercial entities and offered for sale or with the intention to offer it for sale.

12. With regard to commercial possession, Viet Nam has prohibited vendors from possessing ivory with the intent to offer the ivory for sale. By 31 December 2021, Hong Kong SAR will implement a similar prohibition. Japan prohibits commercial possession of raw ivory without proper documentation and registration. Malaysia, the Philippines, and Thailand also ban commercial possession of ivory originating from wild elephant populations (both Asian and African).
13. Malaysia, the Philippines and Thailand also ban personal possession with some exceptions. For instance, Thailand allows a person to own four small personal items made of elephant ivory (weighing less than 0.5 kg in total). In nearly all other jurisdictions personal possession is not banned and, in most cases, not regulated.

Other types of regulation of domestic trade in ivory – Registration

14. Some jurisdictions allowing some domestic trade in ivory have regulated this through registration. In **Japan**, all whole tusks which were imported before the 1989-restrictions on international trade are required to be registered prior to domestic trade. This registration requirement applies irrespectively of whether the owner is a business operator or a private individual who intends to sell the whole tusk domestically. Japan also requires all businesses that offer for sale - or intend to do so - cut pieces of ivory, semi-worked ivory tips and ivory products to be registered and to keep transaction records and file regular reports to the government agencies regarding their stock. Businesses must also prepare traceability information forms for cut pieces, as well as indicate their registration number and the name of the business operator. This is a recent requirement that came into effect in June 2018.
15. Countries with native populations of elephants, including Lao PDR, Thailand and Viet Nam, face additional challenges of controls when there is a legal domestic market of elephant ivory. In most instances, such markets may only be supplied by ivory originating from “domesticated” and not from wild elephants. To enforce this distinction, **Thailand** manages its elephant population via registration and has created a DNA database for all domesticated elephants, making it more difficult to pass off ivory from wild elephants as legal. Thailand also requires registration of possessed ivory items within 30 days of acquisition. Evidence of legal acquisition is needed for the registration. Notification is required for changes in ownership, place of possession, and transformation of the ivory. Lao PDR allows trade in ivory from domesticated or captive bred elephants, but does not have an operational registration requirement in place.

Other findings

16. In most jurisdictions, the laws and regulations banning or limiting domestic trade in elephant ivory do not distinguish between raw and worked ivory. In three jurisdictions – the European Union, Thailand, and the United States – there is an important distinction. The exemptions from their bans on sales and trade for certain items include only worked ivory products and explicitly exclude raw ivory from the exemption.
17. The study finds that, in general, all legal provisions relating to prohibitions and exemptions apply to all persons, irrespective of whether they are residents, foreigners, legal persons or individuals. In case of an offence, there are exceptions: Japan and Viet Nam both provide for higher penalties when the offender is a corporation, rather than an individual.

Priority areas for improving regulation of domestic controls of ivory trade, identified by the study

18. The study identifies the following four areas of priority for consideration in improving regulation of domestic controls of ivory trade: addressing the unintended the effects of bans, online markets, enforcement, and registration of personal items. The description of the priority areas identified by the study is followed by some considerations and suggestions by the Secretariat.

The unintended effects of bans

19. The announcements of bans adopted by governments and the enforcement of those bans seem to have had impacts both domestically and internationally. As not all bans have come fully into effect, legal retailers appear to be liquidating their stock, leading to decreases in the price of elephant ivory. While declines in market value may suggest the effectiveness of the bans as binding tools, such bans present new challenges. For example, exemptions to bans still exist, for pre-Convention specimens and for items incorporating ivory, such as musical instruments. The bans also seem to have had the effect of shifting ivory markets to other countries, often adjacent to the country where the ban was imposed and may lead to an increase in the volume of sales in such countries despite the decrease in price.

Effectively regulating online markets

20. The online marketplace continues to be a platform for ivory sales. Effectively regulating or restricting online sales seems to pose challenges in most domestic markets (and internationally). Countries have taken different approaches toward regulating online markets, including for elephant ivory. Some jurisdictions explicitly ban online ivory trade. Other jurisdictions require online vendors of elephant ivory to abide by the same rules as brick-and-mortar shops. Ostensibly, this includes licensing obligations that might include documenting the legal source of the ivory or reporting the sale to the proper authorities. Such requirements, when present, may not always be fully sufficient to ensure that the sale is legal, although they may contribute to this objective. This is because such sales are difficult to monitor, and requirements thus difficult to enforce. Even if authorities monitor online sales, they are sometimes unable to discern if the advertised product is legal or not. Thus, illegally sourced ivory may be described as legal, and authorities might often have limited ability to check both the paperwork and the product offered for online sale to verify that the ivory being sold is the same as the documented legal ivory.
21. Social media complicates regulation, especially since it is not traditionally viewed as a marketplace. Private sellers may not be aware of licensing requirements, and social media platforms enable knowledgeable sellers to circumnavigate requirements. Private actors are able to create many advertisements with relative anonymity and may use mobile-phone apps that encrypt messages to conduct transactions. Some countries have created laws to specifically tackle the difficulties posed by online trade. The Czech Republic requires sellers to inform potential buyers that ivory items must be accompanied by a valid CITES permit. Sellers must also inform potential buyers of their obligations to register the product. Advertisements that do not comply with these rules are subject to removal.
22. Another important development in online markets has been the self-governance of private actors. Several major retailers, including Google, Amazon, Alibaba, eBay, and Rakuten Ichiba have banned the sale – whether domestic or otherwise – of elephant ivory on their platforms.

Enforcing current laws

23. While jurisdictions have banned or restricted the domestic trade in elephant ivory, enforcement of existing laws remains a challenge. The study reveals few prosecutions across most jurisdictions, especially given the volume of sales. There seems to be an implementation gap between the bold bans and the enforcement of those bans in several countries examined. Although identifying reasons for the scant enforcement was beyond the scope of the study, the study concludes that more could be done to enforce the bans already in place. Education about existing laws may aid enforcement and has been carried out by several Parties.

Registration of personal items

24. With the exception of Thailand, none of the jurisdictions included in the study currently requires individuals to register privately held ivory. The focus has instead been on regulating trade and businesses. The lack of private registration, though, could amplify or reinforce other aspects of the illegal ivory trade. In particular, illegal ivory may be fraudulently claimed as a historic, private item. These items may then be introduced into the stream of commerce, especially given the ease of online trade. Currently, regulatory schedules may not adequately account for this source of illegal trade because private parties may be unaware of obligations to adhere to trade regulations or may conduct private sales that are difficult to detect.

Main findings of the study related to the scoping of the next phase

25. As mentioned above, the next phase of the study of domestic controls in consumer markets for specimens of CITES-listed species for which international trade is predominantly illegal should focus on domestic controls for specimens of species other than elephants. The consultants suggested to identify the most important consumer markets of specimens of such species, *inter alia* by reviewing existing documents prepared for the CITES Conference of the Parties and Standing Committee as well as the World Wildlife Crime Report (2016). The Secretariat would suggest that seizure data reported to the CITES Secretariat in the annual illegal trade reports be used as a starting point. Seizure data provide an indication of illegal trade, but may not always indicate the existence of a consumer market. Therefore, seizure data should be coupled with other information to determine whether the seized specimens were intended to supply a domestic consumer market. The focus of the second phase of the study should be on domestic markets which are primarily supplied by illegally imported specimens. Such markets are those that could potentially act as a driver for illegal imports of specimens that cannot generally be imported for commercial purposes (e.g. specimens of Appendix I-listed species that are not captive-bred or artificially propagated in accordance with

the provisions of the Convention). Domestic consumption of specimens of native species sourced in the wild within the country itself should not be the focus of the study. With regard to the relevant species, the illegal trade reports may provide information that can help identify the relevant species in illegal international trade. Based on the existing CITES Resolutions and Decisions, it is expected that the second phase of the study should include the domestic controls in identified consumer markets of specimens of rhinoceroses, Tibetan antelope, tiger, cheetah, leopard and pangolins. It could further include certain species of birds, tortoises and turtles and certain species of orchids. The Secretariat notes that a study on the status, scope and trends of the legal and illegal international trade in marine turtles¹ is under preparation and is expected to be finalised in time to be made available to CoP18 as an information document. It further notes that the document on Asian big cats and its annexes, prepared for the present meeting contains relevant information regarding domestic trade controls of such species.

Conclusions

26. According to Decision 17.88, the Standing Committee *is requested to review the findings and recommendations of the Secretariat's report in Decision 17.87 and make recommendations for consideration at the 18th meeting of the Conference of the Parties, including appropriate revisions to existing resolutions, to strengthen domestic controls addressing illegal trade in specimens of CITES-listed species for which international trade is predominantly illegal.*
27. As described above, the first phase of the study identifies four areas of priority for improving regulation of domestic controls of ivory trade: the effects of bans, online markets, enforcement, and registration of personal items.
28. Domestic controls with ivory trade are generally addressed by the amendments made to Resolution Conf. 10.10 (Rev. CoP17), related to domestic markets of ivory (see paragraphs 3, 4, 5 and 8 of the Resolution). Parties are currently taking steps to implement these new provisions as shown in this study and in document CoP18 Doc. 69.1 on *Implementation of Resolution Conf. 10.10 (Rev.CoP17)*.
29. With regard to the unintended effect of bans on ivory trade that may lead to ivory markets shifting to other countries, often countries adjacent to the country where the ban was imposed, the study did not provide any concrete suggestions to address this problem. It is further noted that there is rather limited evidence to substantiate this conclusion, given the uncertainty surrounding illegal trade. However, it is possible that illegal trade may be displaced as criminals seek out locations where it might be easier to conduct this illegal trade. To address this matter, Parties that put in place bans on domestic trade should redouble efforts to control their borders with neighbouring countries which may not have a similar ban in place. They should reach out to the neighbouring countries in advance of the entry into force of new and stricter controls and offer enhanced collaboration regarding border controls. Neighbouring Parties should in turn be particularly vigilant in their efforts to combat illegal trade in ivory, by reviewing trends closely to ensure that measures are taken to immediately and effectively respond to illegal trade in ivory. As a precautionary measure, the Standing Committee is proposing an amendment to Resolution Conf. 10.10 (Rev. CoP17) for the consideration and adoption by the Conference of the Parties (see Annex 1 to the present document).
30. With regard to online markets and enforcement, it is noted that in the jurisdictions where the bans have been put in place relatively recently, the implementation gap between bold bans and the limited number of prosecutions may be explained by a delay in time; enforcement could be expected to pick up as the bans are fully implemented across the jurisdictions. Secondly, Decisions 17.92 to 17.96 and 15.57 on cybercrime and Resolution Conf. 11.3 (Rev. CoP17) on *Compliance and enforcement* are recalled. It would seem more appropriate to await the findings and recommendations of the full study before considering possible amendments to Resolution Conf. 11.3. The study suggested that registration of all personal items containing ivory may present a means of combatting the introduction of illegal ivory. However, it is recalled that personal effects may be covered by a general exemption under the Convention and that most jurisdictions included in the study do not regulate personal possession. Further, it is considered that the resources required to implement such regulation and registration would most likely not be proportionate with the results that could be achieved in terms of reducing poaching.
31. With regard to controls of other species for which international trade is primarily illegal, it is premature to recommend revisions to the relevant Resolutions until phase 2 of the study has been conducted. As noted above, the focus of the study should be on domestic markets which are primarily supplied by imported

¹ The study is entitled "Status, scope and trends of the legal and illegal international trade in marine turtles, its conservation impacts, management options and mitigations priorities" (see document [SC70 Doc. 50](#), Annex 2, for its preliminary findings).

specimens. Such markets are those that could potentially act as a driver for illegal imports (as Appendix I-listed species cannot generally be imported for commercial purposes).

32. Given that the next phase of the study still needs to be completed, the Standing Committee concluded that Decisions 17.87-17.88 should be revised by CoP18. Annex 2 to the present document contains the Committee's recommendation for such a revision.

Recommendations

33. The Conference of the Parties is invited to:
- a) consider and adopt the amendment to Resolution Conf. 10.10 (Rev. CoP17) on *Trade in elephant specimens* contained in Annex 1 to the present document; and
 - b) consider and adopt the revised Decisions 17.87-17.88, contained in Annex 2.

COMMENTS OF THE SECRETARIAT

- A. The Secretariat would like to reiterate that the scope and object of the Convention is to regulate trade to protect listed species against over-exploitation through international trade, as stated in its preamble. Trade is clearly defined in the Convention, Article I, paragraph 2 (c) to mean "export, re-export, import and introduction from the sea." There are no exceptions to this in the text of the Convention and so any recommendations with regard to controls of legal domestic markets for Appendix-I species should remain within the scope of the Convention.
- B. In view of the Secretariat, the scope of the proposed revised decisions is very general, and not very well aligned with the provisions of the Convention. The Secretariat understands that the analysis should focus on controls put in place by Parties to ensure that legal domestic markets for specimens of a few selected Appendix-I species do not contribute to poaching or illegal trade in their range States. The size of the study should remain manageable in order to deliver useful results for the Conference of the Parties. In this regard, the terms of references for the study will be based on the illegal trade data, existing species-specific Resolutions as well as information from other sources.
- C. The Secretariat recommend the adoption of the draft decisions with the following minor amendment: In paragraph a) of the first decision, delete the words: "contract independent consultant(s) to" as it would seem more appropriate to just direct the Secretariat to commission the study without providing further details.
- D. The Secretariat notes that the costs of the present study covering nine jurisdictions and one single species were USD 20,000 with the consultants contributing *in-kind* time and resources as well. It further notes that extrabudgetary resources for the work have been made available by the United States of America in the amount of USD 50,000 which limits the scope of the work.

PROPOSED AMENDMENT TO RESOLUTION CONF. 10.10 (REV. COP17) ON
TRADE IN ELEPHANT SPECIMENS

The following text should be included in as a new paragraph after paragraph 5 in the section ***Regarding trade in elephant specimens***

- 5 bis. URGES Parties that close their domestic markets to enhance their border controls and collaboration with neighbouring countries that have not taken similar measures; and such neighbouring countries to closely review trends to ensure that measures are taken to immediately and effectively address illegal trade in ivory.

DRAFT REVISED DECISIONS FOR CONSIDERATION
BY THE CONFERENCE OF THE PARTIES

Decision 17.87 (Rev. CoP18) directed to the Secretariat

The Secretariat, subject to external funding and in consultation with relevant Parties, is requested to:

- a) contract independent consultant(s) to undertake a study of the domestic controls in consumer markets for specimens of CITES-listed species for which international trade is predominantly illegal, other than elephant ivory; and
- b) report the findings and recommendations of this study, as well its own recommendations, to the Standing Committee.

Decision 17.88 (Rev. CoP18) directed to the Standing Committee

The Standing Committee at its 73rd meeting shall review the findings and recommendations of the report referred to in Decision 17.87 (Rev. CoP18) and any recommendations of the Secretariat and make recommendations for consideration at the 19th meeting of the Conference of the Parties, including appropriate revisions to existing resolutions, to strengthen domestic controls addressing illegal trade in specimens of CITES-listed species for which international trade is predominantly illegal.

TENTATIVE BUDGET AND SOURCE OF FUNDING
FOR THE IMPLEMENTATION OF DRAFT RESOLUTIONS OR DECISIONS

According to Resolution Conf. 4.6 (Rev. CoP16) on *Submission of draft resolutions, draft decisions and other documents for meetings of the Conference of the Parties*, the Conference of the Parties decided that any draft resolutions or decisions submitted for consideration at a meeting of the Conference of the Parties that have budgetary and workload implications for the Secretariat or permanent committees must contain or be accompanied by a budget for the work involved and an indication of the source of funding.

The Secretariat is not in a position to provide a tentative budget on the basis of the draft decisions. The United States of America has made USD 50,000 available for the study.